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12-2-2004

## **EEOC v. Eldorado Stone, LLC, and Eldorado Stone Operations, LLC; Timothy O'Dell; and Elmer Rodriguez**

Judge James L. Robart

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## EEOC v. Eldorado Stone, LLC, and Eldorado Stone Operations, LLC; Timothy O'Dell; and Elmer Rodriguez

### Keywords

EEOC, Eldorado Stone LLC, Eldorado Stone Operations LLC, CV03-2768JLR, consent decree, sexual harassment, retaliation, hostile work environment, constructive discharge, sex, employment law, Title VII

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DEC 3 - 2004

CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPUTY

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

v.

ELDORADO STONE, LLC, and ELDORADO  
STONE OPERATIONS, LLC,

Defendants,

and

ABIGAY FULGENCIO BELMONTE, a.k.a.  
MARIA CHAVEZ; KAREN HUNT; ANDREA  
WEBER, EVA CORTEZ; GREG JOHNSON;  
and BRADY PROUTY,

Plaintiff-Intervenors,

v.

ELDORADO STONE, LLC; ELDORADO  
STONE OPERATIONS, LLC; TIMOTHY  
O'DELL; and ELMER RODRIGUEZ,

Defendants.

CASE NO. CV03-2768JLR

CONSENT DECREE AND  
[PROPOSED] ORDER OF  
DISMISSAL



03-CV-02768-ORD

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
Seattle District Office  
909 First Avenue, Suite 400  
Seattle, Washington 98104-1061  
Telephone: (206) 220-6883  
Facsimile: (206) 220-6911  
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## **I. INTRODUCTION**

1. This action originated with discrimination charges filed by Maria C. Chavez, Karen Hunt, Eva Cortez, Andrea Weber, Greg Johnson and Brady Prouty ("Charging Parties") with the Equal Employment Opportunity Commission. The Charging Parties alleged that ELDORADO STONE, LLC ("Eldorado Parent") and ELDORADO STONE OPERATIONS, LLC, ("Eldorado Stone") discriminated against them on the basis of sex by subjecting them to sexual harassment, retaliation, and/or constructive discharge, in violation of Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), 42 U.S.C. § 2000e et seq.

2. The EEOC sent Defendants Eldorado Parent and Eldorado Stone a Letter of Determination with findings of reasonable cause that it had violated Title VII.

3. The Commission filed this lawsuit on September 5, 2003 in the United States District Court for the Western District of Washington at Seattle on behalf of the charging parties.

4. The EEOC, Charging Parties, Defendant Eldorado Parent, Defendant Eldorado Stone, Defendant O'Dell, and Defendant Rodriguez want to conclude all claims of the charging parties without expending further resources in contested litigation.

## **II. NON-ADMISSION OF LIABILITY AND NON-DETERMINATION BY THE COURT**

5. This Consent Decree is not an admission of wrongdoing or an adjudication or finding on the merits of the case. This Consent Decree shall not be used as evidence of liability or for purposes of res judicata or collateral estoppel in any legal proceeding against any Defendant. Neither the agreement to enter this Decree, nor the Decree shall be admissible in any proceeding as an admission by any Defendant of any violation of, failure to comply with, interference, retaliation or obstruction of compliance with Title VII or any other employment law or order.

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1 **VI. MONETARY RELIEF**

2 12. In settlement of the EEOC's and the Plaintiff-Intervener's claims in this lawsuit,  
3 Defendant Eldorado Stone has agreed to pay the Charging Parties the total lump sum of \$475,000  
4 on behalf of all Defendants.

5 **VII. INJUNCTIVE RELIEF**

6 **A. Compliance with Title VII**

7 13. Defendant Eldorado Stone reaffirms its commitment to comply with Title VII. To  
8 further this commitment, the Defendant Eldorado Stone shall monitor the affirmative obligations  
9 of this Consent Decree. The terms of this Consent Decree apply to all employees of Defendant  
10 Eldorado Stone as defined above.

11 14. Defendant Eldorado Stone will not retaliate against any employee for opposing a  
12 practice deemed unlawful by Title VII or for making a charge, testifying, assisting, or  
13 participating in any investigation, proceeding, or hearing associated with this action.

14 15. Defendant Eldorado Stone, its officers, agents, and employees are hereby enjoined  
15 from engaging in personnel practices which unlawfully discriminate against applicants and  
16 employees in violation of Title VII. In recognition of its obligations under Title VII, Defendant  
17 Eldorado Stone will institute the policies and practices set forth below.

18 **B. Re-distribution of Enhanced Sexual Harassment and Complaint Procedures**

19 16. Defendant Eldorado Stone will distribute the expanded sexual harassment policy  
20 (attached as Exhibit 2) in English and Spanish to all employees within 45 days after entry of this  
21 decree.

22 17. This policy will be distributed to all present and future employees, both  
23 management and non-management, in Defendant Eldorado Stone's facilities, beginning 45 days  
24 after entry of this decree and continuing for the duration of the decree. Distribution to temporary  
25 employees may consist of notification of the existence and the location of the policy.

1 18. Defendant Eldorado Stone affirms the following "Statement of Zero-Tolerance  
2 Policy and Workplace Objectives":

3 Eldorado Stone is firmly committed to developing and maintaining a zero-  
4 tolerance policy concerning sex discrimination, sexual harassment and retaliation  
5 against individuals who report discrimination or harassment in the company's  
6 workplace; to swiftly and firmly responding to any acts of sex discrimination,  
7 sexual harassment or retaliation of which the company becomes aware; to  
8 implementing a disciplinary system that is designed to strongly deter future acts of  
9 sex discrimination, sexual harassment or retaliation; and to actively monitoring its  
10 workplace in order to ensure tolerance, respect and dignity for all people.

11 19. In order to effectuate the objectives embodied in the Defendant Eldorado  
12 Stone's Statement of Zero-Tolerance Policy and Workplace Objectives and this Decree,  
13 the Defendant Eldorado Stone will ensure the following policies, procedures, and  
14 practices are in effect:

15 (a) Complaint Procedures.

16 (i) Defendant Eldorado Stone agrees that it will provide the  
17 name, job title, work location, and telephone number of the  
18 management employees charged with investigating such  
19 issues in its written expanded sexual harassment policy .  
20 That information will also be routinely and continuously  
21 posted. If the name or designation of the management  
22 employees charged with investigating issues of sexual  
23 discrimination, sexual harassment, and retaliation change,  
24 defendant will re-post his or her name, job title, work  
25 location, and telephone number. Also as part of its

1 procedure, Defendant Eldorado Stone agrees that it shall  
2 keep a Complaint Box in the employee cafeteria,  
3 lunchroom, or other place within Defendant Eldorado Stone  
4 premises where employees tend to gather and which is not  
5 in the managerial area of Defendant Eldorado Stone's  
6 offices. The management employees designated by  
7 Defendant Eldorado Stone as charged with investigating  
8 complaints of discrimination will gather the complaints  
9 from the Complaint Box.

10 (ii) Defendant Eldorado Stone agrees that it shall enable  
11 complaining parties to be interviewed by Defendant  
12 Eldorado Stone about their complaints in such a manner  
13 that permits the complaining party, at such party's election,  
14 to remain inconspicuous to all of the employees in such  
15 party's work area. Defendant Eldorado Stone agrees that  
16 its complaint procedure shall not impose upon individuals  
17 seeking to make a complaint alleging sex discrimination,  
18 sexual harassment and/or retaliation any requirements that  
19 are more burdensome than are imposed upon individuals  
20 who make other complaints of comparable gravity.

21 (iii) Defendant Eldorado Stone agrees that it shall ensure that its  
22 policies and procedures provide that complaint handling  
23 and disciplinary procedures regarding all complaints of sex  
24 discrimination, sexual harassment and/or retaliation are  
25 investigated and addressed promptly. Specifically,



1 Defendant Eldorado Stone agrees that it shall investigate all  
2 complaints of sex discrimination, sexual harassment and/or  
3 retaliation promptly and to complete investigations within  
4 three (3) weeks. Defendant Eldorado Stone will further  
5 make its best effort to prepare its written findings of the  
6 results of each investigation and the remedial actions  
7 proposed within seven (7) days after completion of the  
8 investigation, and shall thereupon promptly communicate  
9 to the complaining party the results of the investigation and  
10 the remedial actions taken or proposed, if any. Such  
11 communication will reasonably take into account the  
12 privacy of the accused.

- 13 (iv) Defendant Eldorado Stone agrees that it shall make its best  
14 effort to ensure that appropriate remedial action is taken to  
15 resolve complaints and to avoid the occurrence of sex  
16 discrimination, sexual harassment and/or retaliation.  
17 Defendant Eldorado Stone further agrees that it shall  
18 provide for substantial discipline up to and including  
19 termination -- including, but not limited to, suspensions  
20 without pay as a possible consequence for violations of its  
21 sexual harassment policy.

22 (b) Policies Designed To Promote Supervisor Accountability.

- 23 (i) Defendant Eldorado Stone agrees that it shall impose  
24 substantial discipline -- up to and including demotion,  
25 suspension without pay or termination upon any supervisor

1 or manager who engages in sex discrimination or sexual  
2 harassment or permits any such conduct to occur in his or  
3 her work area or among employees under his or her  
4 supervision, or who retaliates against any person who  
5 complains or participates in any investigation or proceeding  
6 concerning any such conduct. Defendant Eldorado Stone  
7 shall communicate this policy to all of its supervisors and  
8 managers.

9 (ii) Defendant Eldorado Stone agrees that it shall continue to  
10 advise all managers and supervisors of their duty to actively  
11 monitor their work areas to ensure employees' compliance  
12 with the company's sex discrimination and harassment  
13 policy, and to report any incidents and/or complaints of sex  
14 harassment, sexual harassment and/or retaliation of which  
15 they become aware to the department charged with  
16 handling such complaints.

17 (iii) Defendant Eldorado Stone agrees that any failure to comply  
18 with this policy will be considered in evaluating its  
19 managers, including when they are being considered for  
20 promotions.

21 (c) Sexual Harassment Training.

22 (i) Defendant Eldorado Stone agrees that it shall continue to  
23 provide annual sex discrimination and sexual harassment  
24 training to all employees, and supervisors; to provide sex  
25

1 discrimination and sexual harassment training to all new  
2 employees during employee orientation; to provide sex  
3 discrimination and sexual harassment training to all senior  
4 managers; and to provide training to all persons charged  
5 with the handling of complaints of sex discrimination,  
6 sexual harassment and/or retaliation in the workplace, and  
7 the techniques for investigating and stopping it. This  
8 training shall include issues regarding sex discrimination  
9 and sexual harassment as it may affect employees and/or  
10 customers of Defendant Eldorado Stone. Defendant  
11 Eldorado Stone understands and agrees that this training,  
12 particularly that directed towards senior managers, may  
13 require one-on-one training or educational sessions.

14 (ii) Defendant Eldorado Stone agrees that all training required  
15 by this Decree shall be conducted in both English and  
16 Spanish by educators, consultants or attorneys experienced  
17 in the area of sexual harassment training.

18 (iii) Defendant Eldorado Stone agrees that it shall require  
19 Eldorado Parent's Human Resources Director to introduce  
20 the annual sexual harassment training to communicate  
21 Defendant Eldorado Stone's commitment to its Statement  
22 of Zero-Tolerance Policy and anti-harassment policy.

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**C. Expunging Records**

20. Defendant Eldorado Stone will not disclose any information or make references to any charges of discrimination or this lawsuit in responding to employment reference requests for information about Maria C. Chavez, Karen Hunt, Eva Cortez, Andrea Weber, Greg Johnson and Brady Prouty. In response to any inquiries, Defendant Eldorado Stone shall provide employment references that includes only dates of employment and positions held. Eldorado Stone will provide each of the Plaintiff-Intervenors a reference letter on Eldorado Stone letterhead confirming dates of employment, positions held, final rate of pay, and a statement that the employee "performed satisfactorily." Defendant Eldorado Stone may produce personnel information involving these charging parties if it is responding to any third party lawful subpoena.

21. Defendant Eldorado Stone will expunge from the Charging Parties' personnel files, any references to a charge of discrimination against Defendant Eldorado Stone and this lawsuit. Defendant Eldorado Stone will not add any information or references to charging parties' personnel files or records regarding their charge of discrimination and this lawsuit after such references have been expunged. Files containing information about the charging parties that have been developed during the subject litigation will be maintained at the offices of Defendant Eldorado Stone's counsel, Dorsey & Whitney. Defendant Eldorado Stone will make the charging parties' personnel files available for inspection by their counsel or the individual charging parties either at the Defendant Eldorado Stone's Carnation facility or at the offices of Dorsey & Whitney.

1                   **D.     Reporting**

2  
3           22.     Six months following the entry of this Decree and every six months  
4 thereafter for the duration of the Decree, Defendant Eldorado Stone will send the EEOC a  
5 written report of individuals who complained of sexual harassment during the prior six-  
6 month period, along with an explanation as to all actions taken with regards to such  
7 complaints.

8           23.     Defendant Eldorado Stone shall submit a final report to the EEOC 30 days  
9 before the Consent Decree expires containing a statement that it has complied with all the  
10 terms of this Consent Decree.

11                   **E.     Posting**

12           24.     Within two (2) weeks after entry of this Decree, Defendant Eldorado Stone  
13 shall post a notice in the form of Exhibit 1 attached to this Decree in prominent and  
14 conspicuous location(s) in or near the employee cafeteria, lunchroom or other place  
15 within Defendant Eldorado Stone's facilities where employees tend to gather. The notice  
16 shall remain posted for the duration of this Decree. In the event that the persons and/or  
17 departments to whom individuals should make complaints alleging discrimination and/or  
18 retaliation change during the term of the Decree, such that the information contained on  
19 the notice is no longer accurate, Defendant Eldorado Stone shall immediately prepare a  
20 new notice that contains the correct information. Defendant Eldorado Stone shall  
21 thereupon promptly replace the old notices with the revised notices. Defendant Eldorado  
22 Stone shall maintain a copy of this decree in its Personnel Office for any employee who  
23 wishes to review it.

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**VIII. ENFORCEMENT**

25. If the EEOC concludes that Defendant Eldorado Stone has breached this agreement, it may bring an action in the United States District Court for the Western District of Washington at Seattle to enforce this Consent Decree. Before bringing an action for breach of the Decree, the EEOC shall first give Defendant Eldorado Stone ten (10) days notice. The EEOC and Defendant Eldorado Stone shall use that 10-day period for good faith efforts to resolve the matter.

**IX. RETENTION OF JURISDICTION**

26. The United States District Court for the Western District of Washington at Seattle shall retain jurisdiction over this matter for the duration of the Decree.

**X. DURATION AND TERMINATION**

27. This Decree shall be in effect for three (3) years, commencing with the date the Decree is filed. If the EEOC petitions the court for breach of agreement, and the court finds Defendant Eldorado Stone to be in violation of the terms of the Consent Decree, the court may extend this Consent Decree.

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## XI. CONCLUSION

28. The provisions of this Consent Decree are not binding on the parties until the authorized representatives for the Plaintiff EEOC and Defendant Eldorado Stone sign and the court enters the Consent Decree in the court.

DATED this 2<sup>nd</sup> day of December, 2004.

A. LUIS LUCERO, JR.  
Regional Attorney

ERIC S. DRIEBAND  
General Counsel

KATHRYN OLSON  
Supervisory Trial Attorney

JAMES L. LEE  
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**ORDER**

The Court having considered the foregoing stipulated agreement of the parties. IT  
IS HEREBY ORDERED THAT the foregoing consent decree be, and the same is,  
approved as the final decree of this Court in full settlement of this action. This lawsuit is  
hereby dismissed with prejudice and without costs or attorneys' fees to any party. The  
Court retains jurisdiction of this matter for purposes of enforcing the consent decree  
approved herein.

DATED this 2nd day of December, 2004.

  
UNITED STATES DISTRICT JUDGE



**ELDORADO STONE, LLC, and ELDORADO  
STONE, OPERATIONS, LLC.  
NOTICE TO ALL EMPLOYEES  
POSTED PURSUANT TO A CONSENT DECREE**

This notice has been posted pursuant to an Order of the Court, approving the Consent Decree entered in resolution of a lawsuit brought by the U.S. Equal Employment Opportunity Commission ("EEOC") against Eldorado Stone, LLC ("Eldorado Parent") and Eldorado Stone Operations, LLC ("Eldorado Stone") on September 5, 2003 in the Federal District Court for the Western District of Washington at Seattle, CV-03-2768JLR. The Consent Decree resolves EEOC's claims of sex discrimination and retaliation against Eldorado Parent and Eldorado Stone and enjoins Eldorado Stone from certain conduct prohibited by law. Eldorado Stone denies the allegations of the EEOC and affirms its commitment to compliance with laws against discrimination.

Federal law and the Consent Decree prohibit discrimination against any individual because of his or her sex.

Federal law also prohibits retaliation against any individual by an employer because of the individual complains of discrimination, cooperates with any Eldorado Stone or government investigation of a charge of discrimination, participates as a witness or potential witness in any investigation or legal proceeding, or otherwise exercises his or her rights under law.

Any employee who is found to have retaliated against any other employee because such employee participated in this lawsuit will be subject to substantial discipline, up to and including immediate discharge.

Employees have the right to bring complaints of discrimination and/or harassment to the U.S. Equal Employment Opportunity Commission, Seattle District Office at 909 1<sup>st</sup> Avenue, Suite 400, Seattle, WA 98104-1061, 206/220-6883, 1-800-699-4000, or the Washington Human Rights Commission at 711 S. Capital Way, Suite 402, Olympia, WA 98504-2490, 360/753-6770.

This is an official notice and shall not be defaced by anyone. This notice shall remain prominently posted in the employee lunchroom/break room at all Northwest region facilities for Eldorado Stone until 11/31/07. This Official Notice shall not be altered, defaced, covered or obstructed by any other material.

## **EQUAL EMPLOYMENT OPPORTUNITY POLICY**

It is the policy of the Company to provide equal employment opportunity for all applicants and employees, as well as independent contractors, without regard to race, color, religion, national origin, sex, age, ancestry, marital status, status as a Vietnam-era veteran, or physical or mental disability, use of a trained guide dog as required under applicable state / federal employment laws. We will provide reasonable accommodation, as required, for the known physical or mental limitation of an otherwise qualified disabled employee.

Employees are reminded that the Company will not tolerate, and specifically prohibits, any employment-based retaliation against anyone who brings a complaint of discrimination or who speaks as a witness in the investigation of a complaint of discrimination. Anyone found to be engaging in any type of unlawful discrimination or retaliation will be subject to disciplinary action, up to and including immediate termination of employment.

## **STATEMENT OF ZERO TOLERANCE POLICY AND WORKPLACE OBJECTIVES**

The Company is firmly committed to developing and maintaining a zero-tolerance policy concerning sex discrimination, sexual harassment and retaliation against individuals who report discrimination or harassment in the company's workplace; to swiftly and firmly responding to any acts of sex discrimination, sexual harassment or retaliation of which the company becomes aware; to implementing a disciplinary system that is designed to strongly deter future acts of sex discrimination, sexual harassment or retaliation; and to actively monitoring its workplace in order to ensure tolerance, respect and dignity for all people.

## **POLICY AGAINST HARASSMENT**

In keeping with the zero tolerance policy, the Company maintains a strict policy prohibiting unlawful harassment on the basis of any legally protected status. (Please refer to the Equal Employment Opportunity Policy, above).

Types of harassment may include: epithets, slurs, negative stereotyping, threats, intimidation, hostile acts or denigrating or hostile written or graphic material posted or circulated in the workplace.

Any employee who thinks that he or she has been harassed, should report the incident to one of the following individuals, or their successor, as posted from time-to-time: Human Resources Coordinator Wen Santana ([wsantana@eldoradostone.com](mailto:wsantana@eldoradostone.com), (ph.) 425.333.6722), Plant Manager Dave Poirier ([dpoirier@eldoradostone.com](mailto:dpoirier@eldoradostone.com), (ph.) 425.333.6722), or Parent Company Eldorado Stone, LLC's Human Resources Director Elizabeth Roche ([eorche@eldoradostone.com](mailto:eorche@eldoradostone.com), (ph.) 760.736.3232).

## **SEXUAL HARASSMENT**

Sexual Harassment includes, but is not limited to, unwanted sexual advances, or visual or physical conduct of a sexual nature. Specifically, no supervisor shall threaten or insinuate either explicitly or implicitly that an employee's submission to or refusal to submit to sexual advances may affect any condition of the employee's employment.

Other sexually harassing conduct in the workplace, whether committed by supervisors or non-supervisory personnel, is also prohibited. This includes sexual flirtations, propositions, or other words or conduct of a sexual nature which may interfere with work performance or create an intimidating, hostile, or offensive work environment.

Any employee who thinks he or she has been sexually harassed by a supervisor, another employee, or agent of the company, should report the facts to his/her supervisor, the plant manager, or the Director of Human Resources.

## **INVESTIGATION AND NON-RETALIATION**

Every harassment complaint will be investigated thoroughly and promptly, and the Company will attempt to keep the investigation confidential to the extent possible. If appropriate, disciplinary action will be taken against the harasser up to and including termination. Employees are assured that no employee who reports an incident of alleged harassment or who participates in an investigation of sexual harassment will be punished or otherwise retaliated against in any way. Employees who feel they have been retaliated against or witness any retaliation shall use the above complaint procedure. Employees are expected to cooperate fully in any investigation.